

Delaware, for example, the local phone company will be able to offer consumers long distance services and other telecommunications products. The local phone company, however, will no longer operate as a monopoly, and will face competition from other companies. For the first time Delawareans will have a choice of telecommunications providers, and as companies compete for their business, they will reap significant benefits.

I also support provisions that would ensure our Nation's schools and libraries have affordable access to educational telecommunications services. Schools can use telecommunications to ensure that all students, regardless of economic status, have access to the same rich learning resources. Libraries can ensure that every community has a publicly accessible means of electronic access to support classroom instruction, to communicate with the world-wide library community, to facilitate small business development, to access employment listings and Government databases, among other uses. It is in the Nation's best interest to ensure that all schools and libraries, even those in rural areas, are active participants in the Information Age.

The impact of this legislation, of course, extends far beyond the borders of Delaware. Everyone, from an elementary school child exploring the world beyond his or her local community, to an elderly person benefiting from the expert advice of a physician 1000 miles away via Telemedicine, to a business seeking to become more efficient, to a parent wishing to telecommute to work, to a couch potato channel surfing through 500 channels, to an innovative entrepreneur seeking to provide new telecommunications services—everyone stands to benefit enormously from this legislation. Consequently, I give it my strong support and urge my colleagues to do the same.

Mr. BILIRAKIS. Mr. Speaker, I rise in strong support of the landmark legislation which we are considering today. S. 652 is the culmination of years of work to overhaul Federal telecommunications policy and position America as a world leader in the dawning information age.

While this bill contains many important provisions, I want to address one area in particular—the issue of “Telemedicine.” As chairman of the Commerce Health Subcommittee, I have a special interest in this subject.

Although it is subject to different interpretations, the term “Telemedicine” generally refers to live, interactive audiovisual communication between physician and patient or between two physicians. Telemedicine can facilitate consultation between physicians and serve as a method of health care delivery in which physicians examine patients through the use of advanced telecommunications technology.

One of the most important uses of Telemedicine is to allow rural communities and other medically under-served areas to obtain access to highly-trained medical specialists. It also provides access to medical care in circumstances when possibilities for travel are limited or unavailable.

Despite widespread support for Telemedicine in concept, many critical policy questions remain unresolved. At the same time, the Federal Government is currently spending millions of dollars on Telemedicine demonstration projects with little or no congressional oversight. In particular, the Departments of Commerce and Health and Human

Service have provided sizable grants for projects in a number of States.

Therefore, I drafted a provision which is included in the conference report to require the Department of Commerce, in consultation with other appropriate agencies, to report annually to Congress on the findings of any studies and demonstrations on Telemedicine which are funded by the Federal Government.

My provision is designed to provide greater information for Federal policymakers in the areas of patient safety, quality of services, and other legal, medical and economic issues related to Telemedicine. With the enactment of this provision, I am hopeful that we can shed light on the potential benefits of Telemedicine, as well as existing roadblocks to its use.

I urge my colleagues to support the conference report to S. 652, this legislation will prove critical in defining our Nation's leadership role and economic viability in the 21st century.

Mr. TAUZIN. Mr. Speaker, as the principal author of section 365 of the conference report, I rise to amplify the limited description of this provision in the statement of managers. In essence, this provision will permit a large ocean-going American-flag vessel operating in accordance with the Global Maritime Distress and Safety System [GMDSS] of the SOLAS Convention to sail without a radio telegraphy station operated by a radio officer or operator.

In implementing this section, the Coast Guard can rely on the Federal Communications Commission to determine that a large-ocean going vessel has GMDSS equipment installed and operating in good working condition. We do not contemplate the Coast Guard conducting a rulemaking, public hearings, or other lengthy regulatory process. Rather, we contemplate a simple adaptation of current, well-established Commission certification procedures.

Under section 359 of current law, the Federal Communications Commission is authorized to issue a certificate of compliance to the operator of a vessel demonstrating that the vessel is in full compliance with the radio provisions of the SOLAS Convention. By law, this certificate must be carried on board the vessel at all times the ship is in use. Thus, once a vessel operator has installed the necessary GMDSS equipment and demonstrated to the satisfaction of the Commission that the equipment is operating in good working condition, the operator will obtain a new or modified certificate of compliance from the Commission. By confirming that a vessel has on board such a valid certificate, the Coast Guard would fulfill its responsibilities under section 365.

Let me emphasize, as well, that this provision does not alter the Commission's manning or maintenance requirements in any respect. Vessel operators, for example, will continue to be able to adopt two of the three permitted maintenance options: on-shore maintenance and equipment duplication.

For too long, American-flag vessels have been saddled with the antiquated telegraphy station requirements of the 1934 act. Through our action today, we hope to help American-flag operators become more internationally competitive and to speed the introduction of the satellite-based GMDSS technology.

Mr. SENSENBRENNER. Mr. Speaker, I support the conference report before the House today. I am hopeful this legislation will ensure that our telecommunications markets

remain the most competitive in the world. The Justice Department's role in the success of the legislation before us is critical. For over a decade, the Justice Department has fostered competition in these markets and the bill requires that the Federal Communications Commission, as part of its interest review, will give “substantial weight” to the Justice Department's evaluation of a Bell Operating Company's application for entry into long distance.

The role included in this bill for the Department of Justice is truly essential to the ultimate success of this bill. In particular, the bill requires the FCC to rely on the Department's expertise to assess the overall competitive impact of the RBOCs entry into long distance. Clearly, there are other public interest factors which are entitled to their proper weight, and the FCC's reliance on the Justice Department is limited to antitrust related matters. In those instances when the cumulative effect of all other factors clearly and significantly outweighs the Justice Department's competitiveness concerns, the FCC should not be precluded from acting accordingly. However, I expect the FCC will not take actions that, in the Justice Department's view, would be harmful to competition.

Second, I strongly opposed a provision included in the House passed bill that would have allowed the Federal Communications Commission [FCC] to issue rules that would preempt local zoning on where to site cellular communications towers. Cellular communications companies would have been allowed to place towers in any location, regardless of local concerns and the actions of local city councils and planning commissions, provided that they had obtained approval from an FCC bureaucrat in Washington. It is estimated 100,000 towers will be sited across the country by the year 2000. I have consistently supported the rights of local governments to decide zoning questions and I opposed this bill because it dramatically infringed on the rights of local government with respect to zoning. I am pleased a compromise has been reached on this issue and the FCC will be prevented from infringing on the rights of local and State land use decisions. The authority of State and local governments over zoning and land use matters is absolutely essential and must be preserved.

I congratulate Chairmen HYDE, BILEY, and FIELDS for their tireless work on this historic legislation.

Mr. HOLDEN. Mr. Speaker, the Telecommunications Act of 1996 furthers the vital local telecommunications competition goal by prohibiting States and local governments from erecting barriers to new entrants providing service. This is an excellent provision, but, because it is a general mandate, there may be creative attempts to get around it. At the very least, such attempts to skirt the law would result in lengthy litigation, which would slow investment and competition. It is for that reason that I would like to spell out in more detail the types of requirements that State and local governments should not be able to impose: A State or local government should not be able to require that any provider:

Demonstrate that its provision of service would not harm the competitive position of any current or future providers of service, would be beneficial to consumers, or would not affect universal service;

Show that its provision of service would not harm the network of any provider, other than

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PROVIDING FOR CONSIDERATION OF H.R. 1555, COMMUNICATIONS ACT OF 1995
(House of Representatives - August 02, 1995)

This V-chip, Mr. Speaker, is based on some very simple principles: That parents raise children, not government, not advertisers, and not network executives, and parents should be the ones to choose what kinds of shows come into their homes.

Second, I believe we should do all we can to keep our airwaves from falling into the hands of the wealthy and the powerful. Current law limits the number of television stations, one per person or media company can reach, to 25 percent of the Nation's households. That rule was established to promote the free exchange of diverse views and ideas. The bill before us today, however, would literally allow one person, in any given area, to own two television stations, unlimited number of radio stations, the local newspaper and local cable systems. Instead of the 25 percent limit under this bill, Rupert Murdoch could literally own media outlets that reach to over half of America's households, Mr. Speaker. In other words, this bill allows Mr. Murdoch to control what 50 percent of American households read, hear, and see, and that is outrageous.

Mr. Speaker, the gentleman from Massachusetts [Mr. **Markey**] will offer an amendment to set that limit to 35 percent, and, frankly, I don't think this amendment goes far enough. I believe we need to address broader issues, such as who controls our networks, who controls our newspapers, and who controls our radios.

In conclusion, Mr. Speaker, I would suggest that we would have liked to have seen a tougher amendment, but I urge my colleagues to support the Markey amendment on concentration, and, Mr. Speaker, this bill has been around a long time. It has been a long time in coming, and I urge my colleagues to support the rule.

Mr. LINDER. Mr. speaker, I yield such time as he may consume to the gentleman from Florida [Mr. **Goss**], my colleague on the Rules Committee.

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, I want to thank the gentleman from Georgia [Mr. **Linder**] and congratulate him for his fine work on an extremely complex rule that took a lot of work to get done, and the gentleman from New York [Mr. **Solomon**] as well, and I am delighted there is support on both sides of the aisle, for it deserves it.

Mr. Speaker, I urge support for the rule also, and I will use my time to indulge in a colloquy with the gentleman from Virginia [Mr. **Bliley**], the honorable chairman of the Committee on Commerce, because two points have come up in discussion today regarding local government authority which I think can be clarified and need to be clarified.

Chairman **Bliley** was Mayor **Bliley** of Richmond, and this gentleman was mayor of a much smaller town, but they were both local governments and there was a great concern among some of our local governments about some issues here, particularly two, as I have said. I want to address the issue of zoning.

Mr. Speaker, as to the cellular industry expanding into the next century, there will be a need for an estimated 100,000 new transmission poles to be constructed throughout the country, I am told. I want to make sure that nothing in H.R. 1555 preempts the ability of local officials to determine the placement and construction of these new towers. Land use has always been, and I believe should continue to be, in the domain of the authorities in the areas directly affected.

I must say I appreciate that communities cannot prohibit access to the new facilities, and I agree they should not be allowed to, but it is important that cities and counties be able to enforce their zoning and building codes. That is the first point.

Similarly, Mr. Speaker, I want to clarify that the bill does not restrict the ability of local governments to derive revenues for the use of public rights-of-way so long as the fees are set in a nondiscriminatory way.

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CONGRESSIONAL RECORD—HOUSE

August 2, 1995

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Mr. BLILEY. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentleman from Virginia, the distinguished chairman of the Committee on Commerce.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding. I want to commend the gentleman and his colleagues and the chairman of the Committee on Rules for this rule. I wholeheartedly support it.

Let me say this. I was president of the Virginia Municipal League as well as being Mayor of Richmond, and I was on the board of directors of the National League of Cities. When legislation came to this body in a previous Congress for a taking of Manassas Battlefield, I voted against it because the supervisors of Prince William County had made that decision. I have resisted attempts by people to get me involved in the Civil War preservation of Brandywine Station in Culpeper County for the same reasons.

Nothing is in this bill that prevents a locality, and I will do everything in conference to make sure this is absolutely clear, prevents a local subdivision from determining where a cellular pole should be located, but we do want to make sure that this technology is available across the country, that we do not allow a community to say we are not going to have any cellular pole in our locality. That is wrong. Nor are we going to say they can delay these people forever. But the location will be determined by the local governing body.

The second point you raise, about the charges for right-of-way, the councils, the supervisors and the mayor can make any charge they want provided they do not charge the cable company one fee and they charge a telephone

company a lower fee for the same right-of-way. They should not discriminate, and that is all we say. Charge what you will, but make it equitable between the parties. Do not discriminate in favor of one or the other.

Mr. GOSS. Mr. Speaker, reclaiming my time, I thank the gentleman for that very clear explanation.

Mr. BLILEY. If the gentleman would continue to yield, the gentlewoman from Maryland has raised a point with me about access for schools to this new technology. Let me assure the gentlewoman that I know there is a provision on this in the Senate bill, and I will work with her and work with the other body to see that it is preserved and the intent of what she would have offered had she been able to is carried out in the final legislation.

Mr. GOODLATTE. Mr. Speaker, will the gentleman yield?

Mr. GOSS. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have heard from a number of my local constituents, and I know the chairman is very strongly supportive of the rights of localities and strongly supportive of decentralized government. We have had some conversations about the process here, and I wonder if I may get a clarification.

Is my understanding correct that the gentleman is committed in the conference process to offer new language that will make it crystal clear that localities will have the authority to determine where these poles are placed in their community so long as they do not exclude the placement of poles altogether, do not unnecessarily delay the process for that purpose, do not favor one competitor over another and do not attempt to regulate on the basis of radio frequency emissions which is clearly a Federal issue? Is that an accurate statement of your intention?

Mr. GOSS. I am happy to yield to the distinguished chairman.

Mr. BLILEY. That is indeed, and I will certainly work to that end.

Mr. GOODLATTE. Thank you and I look forward to working with the chairman.

Mr. BEILENSEN. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, if this bill really deserves a full and open debate, as the gentleman from Georgia has suggested, then why are we taking it up at midnight?

Mr. Speaker, this is a bill that affects the telephone in every house and every workplace in this country. It is a bill that affects every television viewer in this country and a wide array of other telecommunications services, and when does this Congress consider it? At midnight, after a full day of debate on an appropriations bill.

Regardless of your view on this bill, and I think it has some merit, regardless of your view on the substance of

the bill, this sorry procedure ought to be voted down along with this rule. What an incredible testament to this new Republican leadership that they could take a bill of this vital importance to the people of America and not take it up until midnight.

You can roll the votes. That just means there will not be anybody here listening to the debate. You can roll them all night long, as you plan to do. The real question is whether you will roll the American consumer.

Mr. LINDER. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I want to rise in support of the rule. I think this is a good rule.

Mr. Speaker, I want to point out to my colleagues that if this were a software package that would be version 5 or 6. We have been working on this issue for the last 5 years in the Congress. We had a bill pass the House; we never went to conference with the Senate last year.

There is one amendment that has been made in order, a bipartisan amendment, the Stupak-Barton amendment, that deals directly with local access, local control of rights-of-way for the cities that is very bipartisan in nature, and I would urge support of that amendment if we can reach agreement on it, which we are still working on that.

So this is a good rule. I want to thank the Committee on Rules for making Stupak-Barton in order, and I would urge Members to vote for the rule.

Mr. BEILENSEN. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Michigan [Mr. DINGELL], the ranking member of the committee.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

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Mr. DINGELL. Mr. Speaker, I rise in support of the rule. I urge my colleagues to vote for it. H.R. 1555 is a complex bill. It deals with a complex industry. It comprises a substantial portion of the American economy.

There are a lot of controversies in this legislation, and it should not be dealt with cavalierly. It is a matter of some regret to me we are proceeding late at night and that we have not had more time for this. But, nonetheless, the bill that would be put on the floor by the rule resolves many important questions, and it pulls out of a courtroom, where one judge, a couple of law clerks, a gaggle of Justice Department lawyers, and several hotel floors of AT&T lawyers, have been making the entirety of telecommunications policy for the United States since the breakup.

The breakup of AT&T was initiated by its president, Mr. Charley Brown, and it was done because he had gotten tired of having MCI sue him instead of

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APPENDIX 2

the tax base, securing economy in governmental expenditures, restoring the state's agricultural and other industries, and protecting both urban and nonurban development.

(2) (a) The general assembly hereby finds and declares that it is the policy of the state to assist developmentally disabled persons to live in normal residential surroundings. Further, the general assembly declares that the establishment of state-licensed group homes for the exclusive use of developmentally disabled persons is a matter of statewide concern and that a state-licensed group home for eight developmentally disabled persons is a residential use of property for zoning purposes. The phrase "residential use of property for zoning purposes", as used in this subsection (2), includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. "Developmentally disabled" in this section means those persons having cerebral palsy, multiple sclerosis, mental retardation, autism, and epilepsy.

(b) (I) As used in this paragraph (b), unless the context otherwise requires:

(A) "Nonprofit group home" means a group home for the aged which is owned and operated by a person or organization which is exempt from income taxes pursuant to section 39-22-112, C.R.S.

(B) "Owner-occupied group home" means a group home for the aged which is owned and operated by an individual or individuals who actually reside at and maintain their primary place of residence in the group home.

(II) The general assembly declares that the establishment of owner-occupied or nonprofit group homes for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities and who so elect to live in normal residential surroundings, including single-family residential units. Group homes for the aged shall be distinguished from nursing facilities, as defined in section 26-4-103 (1), C.R.S., and institutions providing life care, as defined in section 12-13-101 (5), C.R.S. Every county having adopted or which shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this paragraph (b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the county.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with mental illness as that term is defined in section 27-10-102, C.R.S., is a matter of statewide concern and that a state-licensed group home for eight persons with mental illness is a residential use of property for zoning purposes, as defined in section 31-23-301 (4), C.R.S. A group home for persons with mental illness established under this paragraph (b.5) shall not be located within seven hundred fifty feet of another such group home or of another group home as defined in paragraphs (a) and (b) of this subsection (2), unless otherwise provided for by the county. No person shall be placed in a group home without being screened by either a professional person, as defined in section 27-10-102 (11), C.R.S., or any other such mental health professional designated by the director of a facility, which facility is approved by the executive director of the department of human services pursuant to section 27-1-103, C.R.S. Persons determined to be not guilty by reason of insanity to a violent offense shall not be placed in such group homes, nor shall any person who has been convicted of a felony involving a violent offense be eligible for placement in such group homes. The provisions of this paragraph (b.5) shall be implemented, where appropriate, by the rules of the department of public health and environment concerning residential care facilities for the mentally ill. Nothing in this paragraph (b.5) shall be construed to exempt such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage, or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment

activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulation may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(3) (a) As used in this subsection (3), unless the context otherwise requires:

(I) "Manufactured home" means a single family dwelling which:

(A) Is partially or entirely manufactured in a factory;

(B) Is not less than twenty-four feet in width and thirty-six feet in length;

(C) Is installed on an engineered permanent foundation;

(D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and

(E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et seq., as amended.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No county shall have or enact zoning regulations, subdivision regulations, or any other regulation affecting development which exclude or have the effect of excluding manufactured homes from the county if such homes meet or exceed, on an equivalent performance engineering basis, standards established by the county building code.

(II) Nothing in this subsection (3) shall prevent a county from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the county.

(III) Nothing in this subsection (3) shall preclude any county from enacting county building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors.

(IV) Nothing in this subsection (3) shall be deemed to supersede any valid covenants running with the land.

Source: L. 39: p. 301, § 14. CSA: C. 45A, § 14. CRS 53: § 106-2-14. C.R.S. 1963: § 106-2-14. L. 66: p. 43, § 7. L. 75: Entire section amended, p. 933, § 56, effective July 14. L. 76: (2)(a.5) added, p. 695, § 1, effective April 29. L. 79: (1) amended, p. 1161, § 5, effective January 1, 1980. L. 84: (3) added, p. 823, § 1, effective January 1, 1985. L. 87: (2)(b.5) added, p. 1216, § 1, effective July 1. L. 90: (2)(b) amended, p. 1476, § 1, effective July 1. L. 91: (2)(b)(II) amended, p. 1858, § 20, effective April 11. L. 94: (2)(b.5) amended, p. 2715, § 297, effective July 1.

Cross references: For provisions concerning home and community-based services for persons with developmental disabilities, see part 2 of article 4.5 of title 26; for the care and treatment of the developmentally disabled, see article 10.5 of title 27.

Am. Jur.2d. See 82 Am. Jur.2d, Zoning, § 38, 45.

C.J.S. See 101A C.J.S., Zoning & Land Planning, § 4.

Law reviews. For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Group Homes: Mandated by Statute but Locally Regulated", see 21 Colo. Law. 1643 (1992).

Purposes set forth. This section sets forth the many purposes for which zoning regulations may be designed and enacted, including not only the health, safety, morals, convenience, order, prosperity, or welfare of the present and future

inhabitants of the state but also, among other purposes, the classification of land uses and distribution of land development and utilization, protection of the tax base, fostering of the state's agricultural and other industries, and the protection of urban and non-urban development. Board of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

Judicial presumption of adequate consideration. In the absence of evidence to the contrary, the court will presume that the board of county commissioners did give ample consideration to the multiple purposes of zoning when it adopted the zoning resolution. Board of County Comm'rs

areas. Colorado Leisure Prods., Inc. v. Johnson, 187 Colo. 443, 532 P.2d 742 (1975).

Substantially altered amendment resubmitted to commission. If the board of county commissioners concludes that an amendment should be substantially altered, then it must be resubmitted to the planning commission in order that the county commissioners receive the recommendations of the planning commission on the revised amendment which the board proposes to adopt. Johnson v. Board of County Comm'rs, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. Colorado Leisure Prods., Inc. v. Johnson, 187 Colo. 443, 532 P.2d 742 (1975).

Resubmission not required for nonfundamental changes. Where the resolution proposed by the county planning commission was most comprehensive, but it proposed numerous classifications for zoning districts, including five classes of each district, and the board of county commissioners eased the restrictions relating to the location of fur farms, kennels, portable sawmills, and veterinary buildings in an agricultural and forestry district, the change was not so fundamental in nature as to in anywise materially alter the basic overall zoning policy contained in the resolution of the board, and did not necessitate a resubmission of the matter to the commission. Grant v. Board of County Comm'rs, 164 Colo. 69, 432 P.2d 762 (1967).

Public hearing. This section provides that before the adoption of any part of a zoning plan there shall be a public hearing thereon the time and place of which at least 30 days notice shall be given by one publication in a newspaper of general circulation in the county, and such notice

shall state the place at which the text and maps may be examined. Holly Dev., Inc. v. Board of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1959).

Legislative intent as to publicity. The legislative intent very properly was and is that over plans or changes should be given such publicity as will reasonably inform those owners affected as well as the public, of what is proposed. Holly Dev., Inc. v. Board of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1959).

Notice must be clear, definite, explicit, and unambiguous; and unless its meaning can be apprehended without explanation or argument, it cannot be said to be clear. Holly Dev., Inc. v. Board of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1959).

Notice adequate. Where all who appeared at the "first" meeting necessarily learned that the earlier date was incorrect, and presumably, they made any inquiry, also ascertained that the actual hearing would be held two days later, and the public hearing was exceedingly well attended with about one-half of those persons present opposing with the remaining one-half testifying in support of the resolution, the notice in the instant case was not defective and incorrect dated notice did not neutralize the "valid" first notice. Grant v. Board of County Comm'rs, 164 Colo. 69, 432 P.2d 762 (1967).

Applied in Board of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); **Theobald v. Board of County Comm'rs,** 644 P.2d 942 (Colo. 1982).

30-28-113. Regulation of size and use - districts. (1) Except as otherwise provided in section 34-1-305, C.R.S., when the county planning commission of any county makes, adopts, and certifies to the board of county commissioners plans for zoning the unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, after public hearing thereon, the board of county commissioners, by resolution, may regulate, in any portions of such county which lie outside of cities and towns the location, height, bulk, and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, residence, recreation, or other purposes and for flood control. In order to accomplish such regulation, the board of county commissioners may divide the territory of the county which lies outside of cities and towns into districts or zones of such number, shape, or area as it may determine, and, within such districts or any of them, may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land, and may require and provide for the issuance of building permits as a condition precedent to the right to erect, construct, reconstruct, or alter any building or structure within any district covered by such zoning resolution.

(2) The county planning commission may make and certify a single plan for the entire unincorporated portion of the county or separate and successive plans for those parts which it deems to be urbanized or suitable for urban development and those parts which, by reason of distance from existing urban communities or for other causes, it deems suitable for nonurban development. Any resolution adopted by the board of county commissioners may cover and include the unincorporated territory covered and included

any such single plan or in any of such separate and successive plans. No resolution covering more or less than the territory covered by any such certified plan shall be adopted or put into effect until and unless it is first submitted to the county planning commission which certified the plan to the board of county commissioners and is approved by said commission or, if disapproved, receives the favorable vote of not less than a majority of the entire membership of such board. All such regulations shall be uniform for each class or kind of building or structure throughout any district, but the regulations in any one district may differ from those in other districts.

Source: L. 39: p. 300, § 12. CSA: C. 45A, § 12. CRS 53: § 106-2-12. C.R.S. 1963: § 106-2-12. L. 66: p. 43, § 6. L. 73: p. 1054, § 18. L. 79: (1) amended, p. 1160, § 4, effective January 1, 1980.

C.J.S. See 101A C.J.S., Zoning & Land Planning, § 7, 55.

Law reviews. For article, "1974 Land Use Regulation in Colorado", see 51 Den. L.J. 467 (1974).

The limitations set forth in this section necessarily regulate the density and distribution of population. Di Salle v. Giggall, 128 Colo. 208, 261 P.2d 499 (1953).

State has specifically granted county commissioners the authority to regulate, by resolution, the uses of land in unincorporated areas for trade, industry, residence, recreation, or other purposes, and for flood control, authorizing the establishment of districts or zones in order to accomplish such regulation. Famularo v. Board of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973); Di Salle v. Giggall, 128 Colo. 208, 261 P.2d 499 (1953); Crittenden v. Hasser, 41 Colo. App. 235, 585 P.2d 928 (1978).

And establishment of flood control district and mineral conservation district was within powers

granted County commissioners to regulate uses of land in unincorporated areas. Famularo v. Board of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Regulations relating to mineral conservation districts do not so limit uses of land included in such districts as to be unconstitutional on their face or as applied. Famularo v. Board of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Highest and best use not test of validity of regulation. Although other uses of plaintiff's land would not be as profitable as mobile home use, validity of zoning regulations is not determined by the highest and best use concept or in terms of dollars and cents profitability. Famularo v. Board of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Applied in Pennobscot, Inc. v. Board of County Comm'rs, 642 P.2d 915 (Colo. 1982); **Theobald v. Board of County Comm'rs,** 644 P.2d 942 (Colo. 1982).

30-28-114. Enforcement - inspector - permits. The board of county commissioners may provide for the enforcement of the zoning regulations by means of the withholding of building permits, and, for such purpose, may establish and fill a position of county building inspector and may fix the compensation attached to said position, or may authorize one or more administrative officials of the county to assume some or all functions of such position in addition to their customary functions. Such board may also fix a reasonable schedule of fees for the issuance of such permits. After the establishment of such position and the filling of the same, it shall be unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within the unincorporated territory covered by such zoning regulations without obtaining a building permit from such county building inspector. Such building inspector shall not issue any permit unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all zoning regulations then in effect.

Source: L. 39: p. 300, § 13. CSA: C. 45A, § 13. CRS 53: § 106-2-13. C.R.S. 1963: § 106-2-13. L. 77: Entire section amended, p. 1458, § 1, effective June 9.

Am. Jur.2d. See 82 Am. Jur.2d, Zoning, § 242-253.

C.J.S. See 101A C.J.S., Zoning & Land Planning, § 191, 203.

30-28-115. Public welfare to be promoted - legislative declaration - construction.

(1) Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state, including lessening the congestion in the streets or roads or reducing the waste of excessive amounts of roads, promoting energy conservation, securing safety from fire, floodwaters, and other dangers, providing adequate light and classifying land uses and distributing land development and utilization protecting

ation, see 51 U. Colo. L. Rev. 403 (1980). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987).

Function and duty of planning commission initially is to make and adopt a master plan for the physical development of the unincorporated territory of a county. To that end, the commission is empowered to employ experts and to make detailed surveys and studies to accomplish the harmonious development of the county in terms of the general welfare of the inhabitants and the efficient and economic use of its land. *Johnson v. Board of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colorado Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

It is the duty of zoning officials to have proper information available in a public office so that those affected can determine their rights and privileges, as well as the duties and restrictions applicable to them. *Holly Dev., Inc. v. Board of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Master plan is advisory only. The master plan is only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body. *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Conceptually, a master plan is a guide to development rather than an instrument to control land use. *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Planning commission's decisions regarding an amendment to the land use plan are advisory only and legislative in nature. *Stuart v. Bd. of County Comm'rs*, 699 P.2d 978 (Colo. App. 1985).

And does not confer standing to challenge the plan. Considered alone, a master plan is merely

30-28-107. Surveys and studies. In the preparation of a county or regional master plan, a county or regional planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county or regional master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote the health, safety, morals, order, convenience, prosperity, or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes as will tend to create conditions favorable to health, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient and economic utilization, conservation, and production of the supply of food and water and of drainage, sanitary, and other facilities and resources.

Source: L. 39: p. 297, § 6. CSA: C. 45A, § 6. CRS 53: § 106-2-6. C.R.S. 1963: § 106-2-6. L. 79: Entire section amended, p. 1159, § 2, effective May 25.

Statute does not support conclusion that consideration of alternatives is a prerequisite

advisory and does not confer standing to challenge the plan. *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

And is implemented through zoning ordinances. In order to have a direct effect on property rights, the master plan must be further implemented through zoning, with proper notice and hearing. *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

The master plan embodies policy determination and guiding principles; the zoning ordinances provide the detailed means of giving effect to those principles. *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Master plan was not used as a guide to future zoning but was used, in effect, to rezone property into a classification in which residences are not permitted. *Vick v. Board of County Comm'rs*, 689 P.2d 699 (Colo. App. 1984).

Adoption authorized but not mandated. That statutory scheme in Colorado does not mandate the adoption of a master plan by a county, but rather it authorizes the board of county commissioners to appoint a planning commission whose duty it is to make and adopt a master plan. *Concerned Citizens v. Board of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

Adoption not prerequisite to zoning resolution. Absent a statutory requirement that a county adopt a master plan, a zoning resolution need not be preceded by the adoption of a formal written plan. *Concerned Citizens v. Board of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

Applied in City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981); *Board of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Beaver Meadows v. Bd. of County Comm'rs*, 709 P.2d 928 (Colo. 1985).

site to a finding of reasonableness under statutory section requiring conformity to a county

able. Douglas County Board of Comm'rs v. Public Utilities Comm'n., 866 P.2d 919 (Colo. 1994).

Assuming energy conservation is a prerequisite to a finding of reasonableness, this assumption does not lead invariably to the conclusion that demand-side alternatives must be taken into account. To the contrary, demand-side alterna-

30-28-108. Adoption of plan by resolution. A county or regional planning commission may adopt the county or regional master plan as a whole by a single resolution or, as the work of making the whole master plan progresses, may adopt parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter which may be included in the plan. The commission may amend, extend, or add to the plan or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan. The action taken shall be recorded on the map and descriptive matter by the identifying signature of the secretary of the commission.

Source: L. 39: p. 297, § 7. CSA: C. 45A, § 7. CRS 53: § 106-2-7. C.R.S. 1963: § 106-2-7.

This section deals with the powers and duties of the planning commission. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Commission may amend, add, or extend plan once adopted and approved. Once the master plan is adopted by the commission and approved by the board, the commission then may amend, extend, or add to the plan as time and circumstances dictate. *Johnson v. Board of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), aff'd sub nom. *Colorado Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Also, this section is applicable to the resolutions of county commissioners on the subject of zoning property. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Where a request for change in zoning originates from the planning commission this article contemplates that the question before the county commissioners shall be whether the recommendations of the planning commission shall be approved. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

A recommendation of the planning commission must be in the form of a resolution which itself modifies the property to be affected. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Therefore, in the absence of a resolution which modifies the property to be affected, there is nothing

30-28-109. Certification of plan. The county planning commission shall certify a copy of its master plan, or any adopted part or amendment thereof or addition thereto, to the board of county commissioners of the county. The regional planning commission shall certify such copies to the boards of county commissioners of the counties lying wholly or partly within the region. The county or regional planning commission shall certify such copies to the planning commission of all municipalities within the county region. Any municipal planning commission which receives any such certification may

measures that could be considered. *Douglas County Board of Comm'rs v. Public Utilities Comm'n.*, 866 P.2d 919 (Colo. 1994).

Applied in *Board of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

ing properly before the county commissioners to be approved or disapproved. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

In amending the zoning law, the official or body making the amendment is enacting law, binding on the public, and is not merely dealing with the rights of the owners of the particular property affected, and the act is legislative and based on present facts, rather than judicial and dependent on past facts. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Municipal ordinance precluded. Where a statute, such as this section, authorizes the adoption of zoning regulations by means of resolution, the municipality may not act by way of ordinance; but where the statute requires an ordinance for the attainment of the zoning restriction, a resolution is ineffective to accomplish the desired result. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

The pronouncements of the supreme court in cases dealing with zoning ordinances adopted by cities are applicable to the actions of county commissioners in connection with zoning "resolutions" which they are now authorized to adopt, unless some specific statutory provision authorizes a different procedure. *Gorden v. Board of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Applied in *Theobald v. Board of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

herwise placed on the tax anticipation notes. If all signatures of public officials on tax anticipation notes are facsimile signatures, provision shall be made for a manual authenticating signature on the tax anticipation notes by or on behalf of a designated authenticating agent. If an official ceases to hold office before delivery of the tax anticipation notes signed by such official, the signature or facsimile signature of the official is nevertheless valid and sufficient for all purposes. A facsimile of the seal of the state treasurer may be imprinted, engraved, stamped, or otherwise placed on the notes.

) Tax anticipation notes issued pursuant to the provisions of this section shall be payable solely from the revenues pledged thereto, and the owners or holders of the notes shall not look to any other source for repayment of the principal of or interest on the notes. Such tax anticipation notes shall not constitute a debt or an indebtedness of the state or any school district within the meaning of any applicable provision of the state constitution or state statutes.

) Any tax anticipation notes issued pursuant to the provisions of this section shall constitute a contract between the state treasurer and the owner or holder thereof, and neither the state nor any of its political subdivisions shall take any action impairing such contract.

) No later than January 15 of each year, the state treasurer shall submit a report to the commission on school finance and to the chairs of the education committees of the house of representatives and the senate which includes the following information:

a) The total amount of tax anticipation notes issued by the state treasurer pursuant to the provisions of this section;

b) The names of the school districts receiving proceeds of the tax anticipation notes;

c) The total amount of fees collected by the state treasurer from school districts receiving proceeds of the tax anticipation notes; and

d) The names of school districts, if any, which had funds withheld by the state treasurer pursuant to the provisions of subparagraph (II) of paragraph (f) of subsection (2) of this section for failure to make payment of the principal of or interest on the tax anticipation notes.

10) This section is repealed, effective July 31, 2000.

Source: L. 90: Entire section added, p. 1084, § 47, effective May 31. L. 91: Entire section amended, p. 531, § 1, effective March 28. L. 91, 2nd Ex. Sess.: (2)(f)(II) and (1) amended, p. 55, § 1, effective October 11. L. 95: (10) amended, p. 609, § 7, effective May 22.

LAND USE CONTROL AND CONSERVATION

ARTICLE 20

Local Government Land Use Control Enabling Act

Law reviews: For article, "Vested Property Rights in Colorado: The Legislature Rushes in Where ...", see Den. U. L. Rev. 31 (1988).

9-20-101.	Short title.	29-20-105.	Intergovernmental cooperation.
9-20-102.	Legislative declaration.	29-20-106.	Receipt of funds.
9-20-103.	Definitions.	29-20-107.	Compliance with other requirements.
9-20-104.	Powers of local governments.		

29-20-101. Short title. This article shall be known and may be cited as the "Local Government Land Use Control Enabling Act of 1974".

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

Law reviews. For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

29-20-102. Legislative declaration. The general assembly hereby finds and declares that there is a need within Colorado and a balancing

of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

Applied in City & County of Denver v. Theobald v. Board of County Comm'rs, 644 P.2d 942 (Colo. 1982); Bergland, 517 F. Supp. 155 (D. Colo. 1981);

29-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

29-20-104. Powers of local governments. (1) Without limiting or superseding any power or authority presently exercised or previously granted, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

(c) Preserving areas of historical and archaeological importance;

(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

Source: L. 74: Entire article added, p. 353, § 1, effective May 17.

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

This section does not confer upon counties the authority to impose conditions for granting permits for exploratory oil well operation when such authority was granted exclusively to state oil and gas conservation commission under Oil and Gas Conservation Act. Osborne v. County Comm'rs of Douglas Cty., 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

The Land Use Act (§ 29-20-101, C.R.S., et seq.) and the County Planning Code (§ 30-28-101, C.R.S., et seq.) authorize county regulation of land use in the unincorporated areas of the county. Wilkinson v. Board of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

No authority to adopt "subdivision" definition contrary to § 30-28-101. Sections 29-20-101 to

29-20-107 do not confer the authority upon a county to adopt a definition of "subdivision" in its regulations which is contrary to the express statutory definition found in § 30-28-101 (10). Pennobscot, Inc. v. Board of County Comm'rs, 642 P.2d 915 (Colo. 1982).

Or to adopt regulations covering land specifically excluded. Section 29-20-101 to 29-20-107 do not confer the authority to adopt subdivision regulations covering parcels of land which are specifically excluded from the provisions of § 30-28-101 (10). Pennobscot, Inc. v. Board of County Comm'rs, 642 P.2d 915 (Colo. 1982).

County regulations concerning wetlands protection and nuisance abatement were related to valid county concerns under this act for local governments to regulate land use and protect environment. Colorado Springs v. Eagle County Bd. of